In the High Court of Uttaranchal, at Nainital

Chapter VIII, Rule 32(2) (b)
Description of Case.

Criminal Appeal No. 202/2004
Ramesh Kumar
Vs.
State of Uttaranchal of Uttaranchal.
AND
Criminal Appeal No. 203/2004
Ms. Deepa Thakur
Vs.
State of Uttaranchal of Uttaranchal
AND
Criminal Reference No. 5/2004

Dated of decision: 21st December, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar,

Hon'ble Mr. Justice Irshad Hussain, J.

- Whether the order/judgment should be Sent for reporters for reporting? (Yes)

- Whether the reporters be allowed to See the judgment? (Yes)

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 202/2004

Ramesh Kumar S/o Radhy Shyam,
R/o Mohalla Wasil, Pilibhit, District Pilibhit,
At present R/o Jagjeet Pur, P.S. Kankhal,
District Haridwar .....Appellant.

Vs.

State of Uttaranchal .....Respondent.

AND

Criminal Appeal No. 203/2004

Ms. Deepa Thakur W/o Ramesh Kumar
D/o Jai Singh, R/o Mohalla Wasil,
Pilibhit, District Pilibhit,
At present R/o Jagjeet Pur, P.S. Kankhal,
District Haridwar .....Appellant.

Vs.

State of Uttaranchal .....Respondent.

AND

Criminal Reference No. 5 of 2004.

Sri R.S. Sammal, Amicus Curiae for appellant Ramesh Kumar and Smt. Pushpa Joshi, learned Counsel for appellant Deepa Thakur.
Sri U.P.S. Negi, learned Addl. Government Advocate for the State.

Date: 21st December, 2004.

Coram: Hon'ble Mr. Justice V.S. Sirpurkar, C.J.
Hon'ble Mr. Justice Irshad Hussain, J.

(Per: Hon'ble Irshad Hussain, J.)

Both these appellants were prosecuted under Sessions Trial No. 36/2004 in the Court of Additional Sessions Judge/Ist F.T.C. Haridwar for offences punishable under Section 363 read with Section 34 I.P.C.; 302 read with Section 34 I.P.C. and Section 201 I.P.C. on the allegations that they kidnapped Km. Neha, aged about seven years, at 10.45 a.m. on 19-3-2003 from her school within the circle of P.S. Kankhal, District Haridwar and later on committed her murder near a sugarcane field at Bareilly- Pilibhit Road and threw her dead body there in the sugarcane field of one Amrish in order to screen themselves from legal punishment. Their trial resulted in their

Conviction for the said offences and appellant Ramesh was sentenced to death and to pay a fine of Rs. 2000/- under Section 302 I.P.C., besides being sentenced to seven years R.I. and fine of Rs. 1000/- each for offences under Sections 363/34 and 201 I.P.C., and whereas Ms. Deepa Thakur was awarded lesser punishment of imprisonment for life and fine of Rs. 2000/- under Section 302/34 I.P.C. and further sentenced to undergo seven years R.I. and fine of Rs. 1000/- each for the other two offences under Sections 363/34 and 201 I.P.C. In default of payment of fine, they were also awarded further sentences per judgment and order dated 22.6.2004, passed by the trial Court.

2- Criminal reference, in view of the death sentence, was submitted for confirmation under Section 366 of Code of Criminal Procedure (for short 'Code').

3- The deceased Km. Neha was the daughter of P.W. 1, Kishan Kumar resident of village Jagjitpur of P.S. Kankhal, District Dharidwar. She was student of class-III in Shanti Children Academy, situate at a short distance from the house of the informant. On 19-3-2003 she as usual went to her school but failed to return to her house by the usual time of about 1.30p.m. This caused worry for the informant, who went to the school to enquire about his daughter. He was told that Km. Neha had left the school at about 10.45 a.m. with her teacher Ms. Deepa Thakur. Till evening Neha failed to return and her search by the informant and others yielded no result. The informant therefore submitted a missing report, Ext. Ka. 2, at P.S. Kankhal on 19-3-2003 and finally further written report, Ext. Ka. 1 on 20-3-2003 alleging that his daughter had in fact been kidnapped by her teacher Ms. Deepa Thakur. A case under Section 363 I.P.C. was thus registered against the said appellant on 20-3-2003 and investigation of the case was entrusted to S.I. Rajesh Kumar.

4- The prosecution case as emerged from the evidence was also that Km. Neha was, after she left the school with appellant Ms. Deepa Thakur, later on also seen in the company of second appellant Ramesh and Ms Deepa thakur while at Haridwar bus stand on a Rickshaw and getting down there at about 12 in the noon that day. None of these three, thereafter could be traced till 22.3.2003

when at about 7.30 a.m. both these appellants were, on the clue provided by police informer, arrested from Bairagi Camp Raod near Shankaracharya chowk, within the circle of P.S. Kankhal and on their disclosure statement the dead body of Km. Neha was recovered at about 1.30 p.m. the same day from the sugarcane filed of Amrish situate at Bareilly-Pilibhit road within the circle of P.S. Hafizganj, District Bareilly in the present of the police party headed by P.W. 13, S.I. Kamlendra Kukreti, who was then posted as S.H.O.P.S. Kankhal and had himself taken up the investigation of the case that very day in view of the first Investigating Officer S.I. Rajesh Kumar leaving the station on leave.

5- It was prosecution case that after recovery of the dead body at the instance of the appellants the information was sent to P.S. Hafizganj through P.W.5, H.C.P. Krishnapal Singh, An entry was made in the General Diary of said Police Station vide report No. 26 of 2.00 p.m. dated 22.3.2003, Ext. Ka. 12. On this information P.W. 12, S.I. Sundar Lal Kanojia of P.S. Hafizganj went to the scene of the recovery of the dead body and held inquest and prepared the inquest report, Ext. Ka. 6 and connected documents including the challan report, Ext. Ka7, and diagram of the dead body, Ext. Ka.8 The dead body was dispatched for post mortem, which was performed the same day i.e. 22.3.2003 at 5.00 p.m. by P.W. 1, Dr. G.C. Naugai. Post mortem report Ext. Ka.3 was then prepared. The following ante-mortem injuries were detected on the person of the deceased Km. Neha:-

(1)A complete ligature mark of size 25cm x 20 cm, all around the neck upper part, 4cm below right ear, 4cm below left ear, 5cm below chin and 7 cm below occipital eminance. This injury became visible on cutting the tied thread and also on cutting underlying tissue ecchymosed.

(2) Multiple abrasion present over anterior aspect of neck, around the injury no. 1.

(3) Multiple abrasions in an area of 26cm x 20cm, over front of chest and abdomen.

On internal examination thyroid cartilage was found fractured.

In the opinion of the Medical Officer cause of death was asphyxia due to strangulation and which probably occurred about one to two days ago.

6- After receipt of the relevant documents from P.S. Hafizganj and on completion of other formalities, charge sheet was submitted against the appellants on 18-5-2003. Both the appellants refuted the accusations of the prosecution a and urged that the dead body of the deceased was not recovered on their disclosure statements. Appellant Ms. Deepa Thakur also attributed her false implication to P.W.4, Amal Kaushik whose mother Mrs. Indu Kaushik was running the school where Km. Neha was a enrolled student. While disclosing her address for recording of the statement under Section 313 of the 'Code' she referred appellant Ramesh as her husband. Appellant Ramesh gave out that he was arrested along with his wife Deepa Thakur on 20-3-2003 and that he was subjected to torture by the police.

7- In support of their case, the prosecution examined 13 witnesses including informant, Kishan Kumar (P.W.1), the father of the unfortunate girl Km. Neha. His neighbours Rajnish Kumar Arora (P.W.2), Shyam Sundar (P.W.3 and Som Prakash Jauhary (P.W.7) of the same locality of village Jagjeet Pur, at the relevant time gave evidence that Km. Neha was seen initially in the company of appellant Ms. Deepa Thakur on the day of the kidnapping at about 11.15 a.m. and after some time together with appellant Ramesh also at about 12.00 noon, while they were getting down from a Rickshaw at the Roadways Station of Haridwar. P.W.3, also spoke of illicit relation maintained by the two appellants although they were cousins. Amal Kaushik (P.W.4), the son of the Principal of Shanti Children Academy, corroborated the version of the informant that appellant Ms. Deepa Thakur was a teacher in the said school and Km. Neha used to come to the school and leave it with Ms. Deepa Thakur in the evening. According to him on the day of the occurrence (19-3-2003) Ms. Deepa Thakur left the school at about 11.00 a.m. accompanied by Km. Neha and thereafter did not return to the school. He is the scribe of the written missing information report, Ext. Ka 2, whch was submitted by the informant.

He also gave out that appellant Ramesh used to visit the school to meet Ms. Deepa Thakur. On the day of occurrence also at about 8.15 a.m. appellant Ramesh made the visit to the school to see Ms. Deepa Thakur but by that time Ms. Deepa Thakur had not come to the school and Ramesh went away without meeting her. H.C.P. Krishnapal Singh (P.W.5) Constable Ms. Sushila Pundir (P.W.6), Constable Kali Charan (P.W.8) and S.I. Kamlendra Kukreti (P.W. 13) were examined to prove the arrest of the two appellants and recovery of the dead body of Km. Neha on their disclosure statements as stated above. P.W.13 also spoke of the various steps taken towards the investigation by him and charge sheet, Ext Ka. 14 submitted on 18-6-2003 by him against he appellants P.W.9 Dr. G.C. Naugai performed post mortem of the dead body of Km. Neha. Constable Asha Ram (P.W. 10) formally proved the check F.I.R. (Ext.Ka.4) of the registration of the case and Rashan Lal (P.W.11) is the panch witness of the inquest held on the dead body of Km. Neha by S.I. Sundar Lal Kanojia (P.W.12) of P.S. Hafizganj, District Bareilly. This all is the evidence of the prosecution.

8- In defence Dr. Ved Prakash (D.W.1) was examined to prove the injury report (Ex.Kha.1) of appellant Ms. Deepa Thakur when she was medically examined at 8.30 a.m. on 24.3.2003. It refers to some minor injuries in the nature of contusions on the person of the appellant. This evidence was led to justify her claim that she was beaten up by the appellants to extract her confession.

9- At the conclusion of the trial, the learned Additional Sessions Judge on appraisal of the evidence in the case and after considering the circumstances found the prosecution case proved against the appellants and convicted and sentenced them as stated above.

10- The case of the prosecution solely rest on circumstantial evidence of last seen of the appellants together with deceased Km. Neha on the relevant day and recovery of her dead body later-on the disclosure statements of the appellants.

11- The learned Amicus Curiae appearing on behalf of appellant Ramesh Kumar and learned counsel on behalf of the other appellant contended that the circumstantial evidence in the case has

not been appraised by the learned Additional Sessions Judge within the parameters settled in catena of decisions of the Apex Court and none of the two circumstances highlighted by the prosecution were sufficient to complete the chain to prove the guilt of the appellants. They termed the evidence of the last seen as highly shaky and discrepant and further urged that the evidence in regard to the recovery is nothing but a bundle of concoction of facts which totally failed to establish that the dead body of Km. Neha was recovered at the instance of the appellant Ramesh and appellant Ms. Deepa Thakur knew of it and was privy to the murder of the victim. On the other hand learned A.G.A. supported the findings of the learned Sessions Judge and submitted that two circumstances itself make out a complete chain which conclusively point to the guilt of both the appellants.

12- The law relating to the circumstantial evidence has been stated by the Apex Court in numerous decisions and the law on the point is well settled. In case which solely rests on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

13- Having given our anxious thoughts on the matter and the evidence on record in the light of the respective submissions made at the bar, we are of the considered view that the criticism against the impugned judgment is not wholly unwarranted and we do not think that the guilt of the appellants so far as the charges under Sections 302/201 I.P.C. against the appellants are satisfactorily established. We proceed to record our reasons for the inference so drawn from the evidence on record.

14- The defence has not disputed that Km. Neha aged about seven years, who was a student of class-III in Shanti Children Academy, met with homicidal death, one or two days before 22.3.2003 as per the medical evidence of the case. From perusal of the cross-examination of the informant Kishan Kumar (P.W.1), it is also abundantly clear that the defence has not disputed the fact that Km. Neha as usual went to her school on 19-3-2003 with appellant Ms. Deepa Thakur and has not returned to her house after the school was closed by 1.30 p.m. Further the claim of this witness that on being told that his daughter left the school at about 11.00 a.m. on that day with appellant Ms. Deepa Thakur and that later in the evening Ms. Deepa Thakur was not found in her house, remained also unchallenged. She also could not put forward any reasonable explanation of her absence from the house on that day in her statement under Section 313 of the 'Code'. This circumstance corroborate the evidence of P.W.2, Rajnish Kumar Arora, who stated to have seen this appellant with Km. Neha near Desh Rakshak Ausadhalaya Tiraha at about 11.15 a.m. on 19-3-2003 while he himself was on way to take medicine for him. He being the resident of the nearby locality knew the appellant and the girl very well and that was the reason that his claim in that regard was not challenged in cross-examination. He was also subjected to searching cross-examination in regard to his above claim that Ms. Deepa Thakur was last seen with Km. Neha but nothing of significance seems to have been elicited to make a dent to the prosecution version. It was submitted that the statement of the witness was recorded by the Investigating Officer as late as on 30-3-2003 but that would not be a cogent ground to discard his otherwise reliable evidence.

15- Here the evidence of P.W.4, Amal Kaushik also become relevant as this witness has also been definite in his claim that Ms. Deepa thakur left the school at about 11.00 a.m. with Km. Neha and did not return to the school thereafter. This witness was cross-examined with a view to support the stand taken by this appellant in her statement under Section 313 of the 'Code' and as referred above but we find nothing substantial as may indicate that the witness was inimical towards the said appellant on account of

his indecent behavior towards the said appellant was used to be disliked by her also resisted to. Not a single particular instance or incident was referred to in his cross-examination to bring home the point of view that the relations between the witness and the said appellant were not at all cordial and that may be the reason for this witness to come up and depose falsely against her. Therefore, we do not find ourselves in agreement that the submission of the learned defence counsel that the evidence of this witness being unreliable need to be disbelieved.

16 This takes us to the evidence of P.W.3, Shyam Sundar, who after some time at about 12.00 in the noon on that day, that is, 19-3-2003 saw both the appellants and Km. Neha getting down from a Rickshaw at the Roadways Bus Stand, which is about four kilometers from village Jagjeet pur. Considering this short distance it appear highly probable that the appellant Ms. Deepa Thakur having earlier seen at 11.15 a.m. in the company of Km. Neha was after some time joined by appellant Ramesh and they together came at the Roadway Bus Stand with the said girl. The witness later in the evening told all about this to informant Kishan Kumar. It was argued that if the information was carried to the informant, the name of the witness should have found place in the written report, Ext. Ka.1 which was filed at the police station, next day on 20-3-2003. It is settled that non-mentioning of the name of the witness in the First information Report can not be safe ground to doubt the evidence of the witness as there is no requirement of mentioning the name of all the witnesses in the First Information Report. The authority to be referred is the reported decision of the Apex Court in the matter of State of Madhya Pradesh Versus Dharkole alias Govind Singh and others; 2004 A.I.R. SCW 6241. On account of this omission the evidence of this witness can not be viewed with any suspicion.

17 Learned defence counsel also pointed out to some contradictions in the statement of the witness, none of which being material, need not be referred to here and giving found that the witness has stood the test of cross-examination, we see no reason to disbelieve his evidence. It was also submitted that detailed statement of the witness was recorded under Section 161 of the 'Code' on 6-5-

2003 and on that account it appear to be a case of got up witness. Again the submission would not have any appeal because the witness was also briefly examined and his statement was recorded by the Investigating Officer on 20-3-2003 and this was also the reason that the other appellant Ramesh came into picture. Here it will also not be out of place to mention that the appellant Ramesh also made a visit in the school of the girl in the morning hours as stated by P.W.4, Amal Kaushik and his evidence corroborate the statement of Shyam Sundar that Ramesh later on joined the appellant Ms. Deepa Thakur and they together with Km. Neha were thus seen at the Roadways Bus Stand.

18- Another witness, who also supported the prosecution case that regard, is P.W.7, Som Prakash jauhary, who too saw both the appellants with the girl Km. Neha at the Bus Stand on 19-3-2003 at about 12.00 in the noon while he was there to take a passenger bus on way to Roorkee. He is neighbour of appellant Ms. Deepa Thakur and knew the appellants and the girl very well. He was confronted with his statement under Section 161 of the 'Code' to bring on record the contradiction that the witness earlier gave out that on that day he came to the bus Stand to saw one of his relative off and he himself has not planned to take up journey to some other place. The contradiction does not fall in the category of a material contradiction and therefore not much importance need to be attached to it. Even otherwise the witness went on the state that he went to Rorkee that day and returned to Jagjeet pur in the evening hours at about 7-8 p.m. This brings consistency to his claim and in view of the totality of the evidence of the witness, we find it safe to place him in the category of reliable witness. He was examined twice by the I.O., firstly on 20-3-2003 and secondly on 6-5-2003 and therefore we also do not find any force in the submission that the witness is a got up witness.

19- From appreciation of the evidence of above witnesses the circumstance of last seen is satisfactorily established and we find ourselves in agreement with the inference drawn by the learned Additional Sessions Judge that Km. Neha was taken away from the school at about 11.00 a.m. on 19-3-2003 by appellant Ms. Deepa

Thakur and soon after appellant Ramesh joined them and they were seen together while the girl was alive at the Roadways Bus Stand at about 12.00 in the noon. In other words the circumstance of the last seen of the girl with the appellants stand established.

20- We will now consider the other circumstance of recovery of the dead body of Km. Neha on the alleged disclosure statements of the appellants. The star witness of this circumstance is the Sub-Inspector Kamlendra Kukreti (P.W.13), who has also investigated the case till submission of the charge sheet against the appellants. Initially investigation upto 21.3.2003 was conducted by S.I. Rajesh Kumar. According to the prosecution on the clue provided by the informer, the two appellants were arrested at about 7.30 a.m. on 22.3.2003 from the town of Kankhal an they were interrogated then and there by this witness, while accompanied by other police personnel, who were also examined in the case as referred above. The two appellant allegedly gave out that the dead body of Km. Neha being kept concealed in a sugarcane field by the side of the Bareilly-Pilibhit road will be produced and asked the police party to come with them. It is in the evidence of this witness P.W.13 and other witnesses P.W.5, HCP Krishnpal Singh, P.W.6, Constable Ms. Sushila Pundir and P.W.8, Constable Kalicharan that the two appellants were thereafter brought to the police station Kankhal at about 8.25 a.m. and on their examination entry was made in the General Diary and thereafter they proceeded to the pointed place in a Tata Sumo (four wheeler) arranged by them. It is of significance that they do not claim to have taken the informant or any other witness of the locality, who may be able to fix the identify of the victim, in case the recovery is effected at the instance of the appellants. This glaring omission itself create grave suspicion in the claim of the prosecution that it happened so and the appellants agreed to cooperate and have the dead body recovered at their instance.

21- At the bar the consensus was that the distance between the town of Kankhal and the place of alleged recovery of the dead body of Km. Neha is about 250 kilometers. By road journey one had to pass through crowded cities of Haridwar, Najibabad, Moradabad,

Rampur and Bareilly in order to reach the alleged place of recovery, a sugarcance filed situate on the Bareilly-Pilibhit road, within the circle of P.S. Hafizganj, District Bareilly, In order to reach that place from Kankhal at least six hours will be required. The prosecution has shown the recovery of the dead body from that place at about 1.30 p.m. on 22-3-2003 and thereafter the information was carried to the police station Hafizganj by P.W.5, where after P.W.12, along with other police personnel reached that place to hold inquest on the dead body at about 2.30 p.m. It has to be seen as to whether it possible for the police party to reach that place by 1.30 p.m. and have the recovery effected at the instance of the appellants. In our opinion the answer is big no. The reason being that that the star witness P.W.13 categorically stated that he left the P.S. Kankhal that day, that is, 22.3.2003 at about 10.30 or 11.00 a.m. with police force along with appellants in private vehicle and reached Bareilly in the evening at about 8-8.30 p.m., whereas the place of recovery is about 21 kilometers from Bareilly itself. The distance find place in the challan report, Ext. Ka.8, which form part of the documents of the inquest. The statement of the witness clearly rule out the possibility of the police force reading at the place of the recovery by 1.30 p.m. on 22.3.2003 and it clearly appear to be a case of concoction of the fact of recovery on the disclosure statements of the appellants. Considering the above distance between the two places and the minimum time which could be taken to travel to that place by road, the evidence of the witness being quite natural, leave no manner of doubt that in the claim of the defence that it is not a case of confusion or misunderstanding on the part of this star witness in telling about the time of leaving the police station and reaching the place of the recovery. The evidence of other witnesses also stand on same footings because P.W.5, H.C.P. Krishnapal Singh could not tell as to what was situate in the east, west, north and south of the place of the recovery of the dead body on that day. He also could not tell as to which side the dead body was found lying and on which side it had its head and the feet. Regarding the time of departure from the police station also the witness has been quite indecisive in his assertion. He stated that the appellants were brought to the police

Station at about 8.30 a.m. and he could not remember for how long the two appellants were kept there in connection with their interrogation. Our attention was drawn to the copy of G.D. Report No. 12, of 8.25 dated 22.3.2003 (paper No. 5/4 of the record). It is more than five pages hand written entry which must have taken sufficient time to be made after and interrogation, if really, made and this will also indicate that the police party would not have left the P.S. Kankhal before 10.30 a.m. on that day as stated to by P.W.13 and there was no occasion for the police party to reach at the place of recovery by 1.30 p.m. or near bout the said time by road journey in a four wheeler. The other witnesses P.W.6 and P.W.8 also spoke on similar lines and the probability of keeping up with the time and the opportunity to reach at the place of the recovery at the pointed time, also stand ruled out by their evidence and in the totality of the circumstances of the case we have no hesitation in coming to the conclusion that the evidence of the prosecution in that regard is totally unreliable. It appear that some how the dead body was found at that place by the police of the District Bareilly and on information being thereafter carried to the concerned police station, the theory of recovery was concocted, which ahs amply been exhibited by the evidence of the prosecution itself.

22- Learned A.G.A. while referring to the evidence in regard to this circumstance submitted that Km. Neha having been lastly seen in the company of the appellants, the reasonable explanation need to have been given by the appellants as to how and when the girl parted their company and went away all alone or with some one else. In support reliance was placed on the reported decision in the matter of Sahavevan alias Sagadevan versus State represented by Inspector of Police, Chennai (2003) 1 Supreme Court Cases 534. It was a case of custodial death and the deceased was in the police custody having been murdered it was not shown that when that person parted company of the police personnel. The facts of the instance case are different and it is of significance that the time gap between the point of time when the appellants and the deceased were last seen alive and when the deceased was allegedly found dead is not so small that the possibility of any person other than the

appellants being the author of the crime becomes impossible. It is also settled that only circumstance of the last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused. It is of significance that the appellants according to the prosecution gave out that the minor girl Km. Neha was taken to Bareilly on 19-3-2003 and they stayed in a rented house where they have planned to settle after getting married. Next day the girl was taken by the appellant Ramesh and she was eliminated at the place of the alleged Recovery. According to the medical evidence the death took place about one or two days before 22.3.2003. The post mortem was performed at 5.00 p.m. and according to the evidence the murder was probably committed either in the evening of 21st or at the most in the evening of 20th of March 2003. There is no chain of circumstances to show that from 12.00 in the noon of 19.3.2003 till the girl met her homicidal death she remained in the company of the appellants or any of them. No efforts whatsoever were made to collect the evidence to make out a chain of circumstances so far complete as not to have leave any reasonable ground for a conclusion consistent with the innocence of the accused. Therefore, the circumstances of alleged recovery on the disclosure statements of the appellants having not been established and the chain of circumstances being not complete, the mere circumstances of last seen could not have been taken to prove the guilt of the appellants that the murder of Km. Neha was committed by the appellants or any of them.

23- It was lastly argued by the learned A.G.A. that on account of any faulty investigation the culprit of the ghastly crime could not be permitted to go scot-free. As discussed above, it is not a case of faulty investigation, but the evidence of the prosecution itself prove that the circumstances as regards to the recovery of the dead body appear to have been concocted, which cast serious doubt on this aspect of the prosecution. By no reasoning it would be safe to place reliance on the evidence of the prosecution in regard to the second circumstance which entail rejection of the claim of the prosecution that appellant or any of them is murderer of the victim

of the case and her dead body was concealed to screen themselves or any of them from legal punishment.

24- For the reasons aforesaid we are of the firm view that the learned Additional Sessions Judge failed to take in to consideration the evidence of the prosecution in that regard in proper perspective and went on to hold that both the circumstances complete a chain to prove the guilt of the appellants that the murder of the victim Km. Neha was committed by appellant Ramesh in concert with his paramour appellant Ms. Deepa Thakur. In fact this is a case in which only evidence of kidnapping with common intention punishable under Section 363 read with Section 34 I.P.C. stand established and the conviction and sentence awarded against both the appellants under this count need to be maintained as such. The appellants are entitled to be held not guilty and to be acquitted of the charges under Section 302/24 and also under Section 201 I.P.C.

25- The appeals are therefore partly allowed. The appellants Ramesh Kumar and Ms. Deepa Thakur are acquitted of the charges under Section 302//34 I.P.C. and Section 201 I.P.C.

26- The conviction and sentence of the appellants Ramesh Kumar and Ms. Deepa Thakur under Section 363 read with Section 34 I.P.C. as recorded per judgment dated 22.6.2004 of the trial court is affirmed. They are in jail and shall serve out the sentences as awarded and referred above.

27- The criminal reference is answered against the State.

28- Let the record of the case be sent to the Court concerned for compliance to be reported to the Court within a period of one month.

(Irshad Hussain, J.) (V.S. Sirpurkar, C.J.)

ISB